

# Physical distancing in workplace remains - for now

## COLMAN HIGGINS

**It is possible that physical distancing requirements in workplaces may be relaxed further after October 22, according to a leading solicitor speaking at last week's Health and Safety Review conference.**

Kevin Langford, partner at Arthur Cox, solicitors, told the annual gathering hosted by HSR, IRN's sister journal, that the Work Safely Protocol may be amended again before further Covid-19 restrictions are relaxed on October 22 and this may include a relaxation of rules such as two-metre distancing in workplaces after that date.

But until then - and maybe still after that date - these physical distancing requirements remain in indoor workplaces, which are to be returned to on a "phased and staggered basis".

This phrase is also used to describe the period after October 22, he reminded delegates. "Phased" means on a part-time basis and "staggered" means not having all workers returning on the same day.

Mr Langford cited the "helpful and concise" guidance note published by the Labour Employer Economic Forum (LEEF) on September 7, which he said was one of three guides for employers on returning to workplaces, along with the Government's 'Reframing the Challenge' plan from August 31 and the latest revision of the Work Safely Protocol on September 16.

He added that the LEEF note calls on employers to actively engage with workers regarding a safe return to in-person attendance at work. Employers are also, in consultation with workers, to start developing longer-term working arrangements for blended or remote working, having regard to operational requirements.

The role of Lead Worker Representative (LWR) is important as a first instance contact for employees with concerns about Covid safety. While there is no prescribed number of LWRs, they are supposed to be in proportion to the overall size of each workplace.

If a Covid safety issue cannot be resolved at LWR level, the next step is to bring the issue to the Workplace Contact Unit of the Health and Safety Authority (HSA) if they still have concerns.

## VACCINATION

In relation to what he called the “hot topic” of employee vaccination, he said Article 40 of the Irish Constitution provided a right to bodily integrity and it was not legally permissible to make vaccination compulsory.

The EU’s GDPR Directive, he said, required a legal basis to collect data on employees’ vaccination status. The Department of Enterprise, Trade and Employment, he said, has also said that employees will not be required to divulge their vaccination status.

While there is a requirement on employers in certain medical and laboratory environments to offer vaccination, due to regulations on biological agents (of which Covid-19 is one), this only applies to those environments and even there, vaccination is still voluntary.

## **REMOTE WORKING**

In relation to remote working, he drew delegates’ attention to the Government document ‘Guidance on Working Remotely’, which sets out a long list of issues to be considered, including:

- Employer responsibility for health and safety;
- HSA guidance on working from home;
- Ergonomic workspaces;
- Work-related stress;
- Mental health;
- Insurance and liability;
- Terms of employment (for example, does a certain level of remote working become a condition of employment?);
- Organisation of working time (recording working time in the home, ensuring proper breaks, etc)
- Equipment provision and home expenses;
- Employee privacy;
- Remote access to networks;
- Protecting personal data;
- Video conferencing;
- Cyber security;
- Equality of promotional opportunities and career advancement.

## **RIGHT TO DISCONNECT**

In relation to the Code of Practice on the Right to Disconnect, he said there were three main principles:

- The right not to work routinely outside normal working hours;
- The right not to be penalised for refusing to work outside normal working hours;
- The duty to respect colleagues' right to disconnect outside working hours.

He said the "tone and urgency" of communications sent outside normal working hours was important, as was making it clear in such communications that there is no obligation to respond until normal working hours resume.